IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 364 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? :

COMMISSIONER OF INCOME-TAX

Versus

B. L. DESAI FAMILY TRUST

Appearance:

1. INCOME TAX REFERENCE No. 364 of 1992

MR MANISH R BHATT for Petitioner No. 1

SERVED BY RPAD - (N) for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE K.A.PUJ

Date of decision: 18/07/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue, the following question is referred for our opinion in respect of assessment year 1980-81 :-

"Whether on the facts and in the circumstances of the case and in law, the Tribunal is right in holding that provisions of Sec. 161 of the I.T. Act are applicable for taxing the income of the Trust directly at the hands of the beneficiaries?"

2. We have heard Mr MR Bhatt, learned senior standing counsel for the applicant-revenue. Though served, none appears for the respondent-assessee.

3. Our attention is invited to the decision of this Court dated 15.12.1989 in Income-tax Reference No. 105 of 1987 raising the same controversy. In the said decision, this Court answered the question in favour of the assessee and against the revenue following the decisions of this Court in K.T. Doctor vs. CIT, (1980) 124 ITR 501. The said decision of this Court in K.T. Doctor (supra) has thereafter been confirmed by the Hon'ble Supreme Court subject to certain observations in CIT vs. K.T. Doctor, (1998) 230 ITR 744.

4. The aforesaid decisions have been followed by us in Income-tax Reference No. 189 of 1992 also. Following the aforesaid decisions, our answered to the question referred to us is in the affirmative i.e. in favour of the assessee and against the revenue.

The reference accordingly stands disposed of with no order as to costs.

(M.S. Shah, J.) (K.A. Puj, J.)

sundar/-